

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 27 DAY OF 11 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

Original Application No.354 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Banshi Lal aged about 54 years Son of Shri Nand Ram, resident of Gwaltoli, Village and Post Hassari, District Jhansi.

..... Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Defence Headquarters, New Delhi.
2. Chief Engineer HQrs, Lucknow Zone Lucknow-226002.
3. Commander Works Engineer (CWK) MES Jhansi.

..... Respondents

Present for Applicant : Shri R.K. Nigam

Present for Respondents : Shri R.K. Srivastava

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

Through this O.A., the applicant has claimed following main relief/s:-

- (i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order of dismissal dated 21.04.1994 (Annexure A-I) and impugned appellate order dated 10.03.2004 (Annexure 15 of O.A) be quashed and set aside.
- (ii) to issue another writ, order or direction in the nature of mandamus thereby commanding the respondents to reinstate the petitioner back in service with full back wages and consequential benefits within a time bound period.

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2. The brief facts of the case are that the applicant initially was appointed as Charge Mechanic in MES department at Jhansi under respondent no.3 in substantive/permanent capacity. On 06.05.2006 a complaint was made by the Union against the applicant regarding production of fake education certificate at the time of interview for the post of Charge Mechanic. On the basis of said complaint applicant, a major penalty charge-sheet dated 07.06.1986 was served upon the applicant. The charges levelled against the applicant was as under:-

“Shri Bansilal, while functioning as Vehicle Mechanic (Now Charge Mechanic) in the Office of Garrison Engineer Jhansi during the period from 24 Feb 75 (while entering the Govt. service) to date committed an act of fraud and cheat the department in that he submitted false education certificate issued from Joint Director Siksha Sambhag, Gwalior, which on verification was found false.”

3. To establish the above charge, letter dated 03.12.1985 issued by the Joint Director of Siksha Sambhag Gwalior and letter-dated 12.04.1986 issued by the Chief Engineer, JZ Jabalpur's were taken into consideration and the applicant was dismissed from service vide order dated 14.05.1988. Against the above order, the applicant preferred statutory appeal dated 25.05.1988, which was rejected by the Appellate Authority, vide order dated 09.09.1988. Aggrieved the applicant filed O.A. No. 438 of 1989 (Bansi Lal Vs. Union of India and Ors) which this Tribunal vide judgment and order dated 24.04.1992 allowed with following directions:-

“2. Before the Enquiry Officer, the applicant gave an application dated 19.02.1987 requesting that the prosecution witness be examined, cross-examined and the

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evidence be recorded for applicant's defence. He desired a full fledged enquiry. The Assisting Officer of the petitioner also desired the copies of the documents i.e. Certificate alleged to be false, be given to the appointment. But the requests were not accorded to. It appears that the respondents have not examined any prosecution witness nor the applicant was given any opportunity to examine the certificate or document alleged to be false. Thereafter, the disciplinary authority passed an order removing the applicant from service. The said order is challenged by the applicant on the ground that the copy of the documents alleged to be false were not given to him and the principles of natural justice denied to the applicant as he was not given the opportunity to defend himself"

3. According to the applicant, the Enquiry Officer has not given to the applicant the opportunity to confront with the alleged incriminating documents and no prosecution witnesses were examined. As a matter of fact the applicant was not given reasonable opportunity to defend himself and as such it is against the principle of natural justice. Therefore, this is case as covered by the decision of the Supreme Court in the case of Union of India Vs. Mohd. Ramzan AIR 1991- Supreme Court-page 471. Accordingly the application of the applicant is allowed and the removal order dated 14.05.1988 and appellate order dated 9.9.1988 are quashed and the appellant is deemed to be continuing in service. However, it will be open for the disciplinary authorities to go ahead with the enquiry proceedings giving reasonable opportunity to the applicant to submit his representation against the same."

4. Learned counsel for the applicant submitted that as per the direction (quoted above), the Respondents instead of reinstating the petitioner, suspended him from retrospective effect i.e. from the date of his original appointment i.e. 14.05.1988, while the suspension order was actually issued on 31.08.1992/Annexure-AXI/Compilation-II. Aggrieved the petitioner submitted several representations to the authorities, Learned counsel for the applicant would further contend that the very complaint on the basis of which the charge sheet was served upon the applicant, was subsequently withdrawn, therefore, the charge sheet could not have been preceded.

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5. As the respondents did not pay any heed to the representations filed by the applicant, the applicant filed O.A. No. 1004 of 1994 Bansi Lal Vs. Union of India and others, which was dismissed vide judgment and order dated 20.02.2002 on the ground of alternative remedy /Annexure-II of O.A . In pursuance of the above order, the applicant preferred a statutory appeal dated 12.06.2002. Since the respondents kept mum and did not pass any order on appeal dated 12.06.2002 even after expiry of six months period, the applicant filed the present O.A on the grounds that as per the direction (quoted above), the respondents instead of reinstating the petitioner, suspended him from retrospective effect i.e. from the date of his original appointment i.e. 14.05.1988, while the suspension order was actually issued on 31.08.1992; the very complaint on the basis of which the charge sheet was served upon the applicant, was subsequently withdrawn, therefore, the charge sheet could not have been preceded and the applicant has not been given any opportunity of cross-examination of the prosecution witness nor original documents were shown.

6. Learned counsel for the applicant filed Amendment Application challenging the order dated 10.03.2004/Anneuxre-15 of O.A passed by the Appellate Authority during the pendency of the present O.A, which was allowed by the Tribunal.

7. Learned counsel for the applicant submitted that the retrospective suspension and retrospective dismissal w.e.f. 14.05.1988 is totally illegal in view of the decision rendered by the Hon'ble Supreme Court reported in **AIR 1978 SC Page 851- Mohinder Singh Gill Vs. U.O.I & Ors.**

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8. On notice, the respondents filed Counter Affidavit on 12.04.2004. According to the respondents, the genuineness of the certificate produced by the applicant was got verified from the office of Joint Director, Education, Gwalior, who vide letter dated 03.12.1985 denied the authenticity of the educational certificate produced by the applicant at the time of interview. Thereafter regular enquiry was ordered to be conducted by appointing Inquiry Officer who concluded the inquiry and report of the Inquiry Officer was duly sent to the applicant vide order dated 14.05.1988. The Disciplinary authority on careful consideration of the findings recorded by the Inquiry Officer and the relevant documents available on record, awarded the penalty of 'Dismissal from service' vide order dated 14.05.1988, against which the applicant preferred an appeal dated 23.05.1988, which was also rejected by the Appellate Authority vide order dated 09.09.1988. Against the order dated 14.05.1988 and 09.09.1988, the applicant filed O.A No. 436/89 before this Hon'ble Tribunal which was allowed by the Hon'ble Tribunal and order of removal dated 14.05.1998 and Appellate Order dated 09.09.1988 were quashed on the ground that the Inquiry Officer had not given an opportunity to the applicant and no prosecution witnesses were examined. However, liberty was given to the disciplinary authority to go ahead with the enquiry proceeding giving reasonable opportunity to the applicant to submit his representation. In compliance of the direction of the Hon'ble Tribunal in O.A No. 436/89, the applicant was reinstated in service vide order dated 31.08.1992. Since the liberty was given to the respondents to proceed with the disciplinary proceedings, the applicant was placed under suspension simultaneously w.e.f. 14.05.1988 and subsistence allowance, as admissible, was paid to him w.e.f. 14.05.1988. In further compliance of the directions of the Hon'ble, the applicant was provided

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photocopy of the educational certificate of 8th class , which was produced by him at the time of interview and on the basis of which he was selected as Vehicle Mechanic and on verification same was proved fake. The applicant was also provided with advertisement letter issued by the Employment Exchange, photocopy of 1st page of Service Book and other relevant documents. The applicant was also given opportunity for cross examination of witnesses. The applicant replied the documents provided by the respondents and the disciplinary authority after considering the finding recorded by the Inquiry officer and based on oral, documentary as well as circumstantial evidences, came to the conclusion that the applicant produced the fake certificate for securing job fraudulently and as such there was no other option but to pass penalty of 'dismissal from service' vide order dated 21.04.1994. Aggrieved the applicant filed O.A No. 1004/1994, which was dismissed vide order dated 20.02.2002 on the ground that the applicant filed the said O.A without exhausting the departmental remedy. Thereafter the applicant filed an appeal dated 12.06.2002, which was duly considered by the Appellate Authority, who has duly considered the case of the applicant and rejected the same vide order dated 10.03.2004.

9. Learned counsel for the respondents contended that the act of fraud~~ulent~~^{ment} committed by the applicant by submitting forged and fake educational certificate at the time of interview, was fully established during verification of the authenticity of the said certificate from the office of Joint Director, Education, Gwalior, from where it was verified that the education certificate submitted by the applicant was fake, having regard to the same, there was no other option but to initiate a departmental inquiry against the applicant under rules and thereafter

passing the impugned order dated 21.04.1994/Annexure-1 of O.A dismissing the service of the applicant. Learned counsel for the respondents would further contend that after going through the entire background of the dispute regarding education certificate produced by the applicant at the time of interview and based on oral, documentary and circumstantial evidences and also considering each and every points raised by the applicant in his appeal dated 12.06.2002, the Appellate Authority rightly rejected the same vide Order dated 10.03.2004.

10. Learned counsel for the respondents invited our attention to the directions contained in the judgment and order dated 24.04.1992 passed by this Tribunal in O.A. No. 438 of 1989 (Bansi Lal Vs. Union of India and Ors), and submitted that in compliance thereto, a fresh inquiry was held in which the applicant was given sufficient opportunity to defend his case. A memorandum of charge sheet alongwith its annexure were served to the applicant. Appointment of inquiry Officer and Presenting Officer was also ordered. Inquiry Officer issued notice to the Presenting Officer and the charged official and date of preliminary hearing was fixed. The charged official/applicant asked to present his case. The charged official did not state nor did he submit any document proving the documents produced by him are genuine and authenticated. Therefore, a detailed inquiry was conducted in the matter by giving all due opportunities to the applicant to defend his case and the Inquiry Officer has concluded the inquiry proceeding proving the charge leveled against the applicant.

11. Learned counsel for the respondents further contended that on careful consideration of the inquiry report and the representation of the

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applicant, the disciplinary authority arrives that the Inquiry was held strictly in accordance with provisions of CCS (CCA) Rules, 1965 and ample opportunity was given to the applicant to defence his case. Learned counsel for the respondents would further contend that after going through the entire background about the case of the applicant and based on oral, documentary and circumstantial evidences and on careful consideration of the points raised by the applicant in his appeal dated 12.06.2002 and the inquiry report, the Appellate Authority has passed the order dated 10.03.2004 rejecting the appeal of the applicant, which any view of the matter cannot be said to be improper and illegal as the applicant was given all due opportunities provided under CCA(CCS) Rules, 1965, to defend his case and based on the documents on record, the Appellate Authority has come to the conclusion that the charges leveled against the applicant is established and , therefore, the order passed by the disciplinary authority on 21.04.1994 is covered and accordingly rejected the appeal of the applicant dated 12.06.2002 vide order dated 10.03.2004.

12. Learned counsel for the applicant on the other hand submitted that the Disciplinary Authority has passed the order dated 21.04.994 with retrospective effect from 14.05.1988, which is totally violative of Article 311(2) of Constitution of India and Principles of Natural justice. In support of his contention, learned counsel for the applicant placed reliance on following decisions: -

- a. **Full Bench Judgment dated 08.01.2004 passed by the C.A.T. (Full Bench), Madras in O.A. No. 587, 588, and 589 of 2002 (R. Jambukeshwaran & Ors Vs. U. O.I. & Ors.)** wherein it has been held that when a person is appointed

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necessarily with the passage of time, he gets certain rights, if no action is taken within a reasonable time, it would tantamount to acquiescence- it is not permissible to make inquiry and start challenging his appointment being erroneous.

- b. **ATLT(1) CAT Cutt Bench page 256-260- Kalicharan Barik Vs. U.O.I. & Ors (O.A. No. 278/87)** in the said judgment it has been held that fake school leaving certificate-charge sheet made after 13 years of service- after such a long lapse of time, it is not proper to go into the matter.
- c. **2004(2) UPLBEC page 1743- Anupam Dubey Vs. Sachiv U.P. Basic Shiksha Parishad at Allahabad and another** in the said judgment it has been held that after about 7 years, petitioner terminated on the charge that he submitted forged certificate-impugned order set aside- petitioner allowed liberty to cross exam from Edu. Authorities from where authenticity was got made, behind his back.
- d. **1998(3) UPLBEC 2019 (Supreme Court)- M.M. Malivya Engineering College Society and another Vs. K. N. Srivastava & Ors** in the said judgment it has been held that copy of the documents on which Charge sheet was based not furnished nor confirmed in-spite of demand- principle of natural justice violated.
- e. **ATC 1993 Vol. 23 page 50 – Sudhir Chandra Dutta Vs. U.O.I & Ors** – in the said judgment, relying on the decisions of Hon'ble Supreme Court, retrospective dismissal has been held illegal.

13. Learned counsel for the respondents at this stage contended that although the disciplinary authority awarded the penalty of 'Dismissal from Service' with retrospective effect from 14.05.1988 vide order dated 21.04.1994, but the Appellate Authority while deciding the appeal of the applicant dated 12.02.2002 vide order dated 10.03.2004, in para 12 has

clearly observed that the 'punishment awarded by the CWE, Jhansi cannot be effective with retrospective effect as per Rule 15(4) of CCS (CCA) Rules, 1965', and had revised the penalty of 'Dismissal from service' with immediate effect.

14. We have heard learned counsel for either sides and perused the pleadings as well as the written submission filed by them.

15. Learned counsel for the applicant has taken a specific plea that the Disciplinary Authority has passed the order dated 21.04.994 with retrospective effect from 14.05.1988, which is totally violative of Article 311(2) of Constitution of India and Principles of Natural justice. This plea perhaps has been taken by the applicant with regard to the order dated 21.04.1994 passed by the disciplinary authority, validity of which was challenged by the applicant in the present O.A during the pendency of appeal dated 12.02.2002 filed by him. During the pendency of the O.A, the Appellate Authority vide its order dated 10.03.2004 decided the appeal of the applicant in following terms: -

"15. NOW THEREFORE, in exercise of powers conferred upon me under Rule 27 of CCS (CCA) Rules, 1965, I, Chief Engineer, Central Command, on careful consideration of the facts of the case, uphold the penalty of 'Dismissal from service' which should be a disqualification for the future employments under the Govt. with immediate effect, imposed on MES-419819 Shri Bansi Lal Ch/Mech by CE Jabalpur Zone vide his Order No. 50031(9)/6/E1(Con) dt 17 Aug 94."

Underlined to lay emphasis

16. In view of the order passed by the Appellate Authority, we do not find force in the submissions of learned counsel for the applicant that

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order dated 21.04.994 has been passed with retrospective effect from 14.05.1988,


17. Learned counsel for the applicant further submitted that as per the direction of this Tribunal contained in judgment dated 24.04.1992, the respondents instead of reinstating the petitioner, suspended him from retrospective effect i.e. from the date of his original appointment i.e. 14.05.1988, while the suspension order was actually issued on 31.08.1992. We are also not convinced with this plea of the learned counsel for the applicant because the applicant was directed to be deemed to be continuing in service and liberty was given to the disciplinary authority to proceed with the disciplinary proceedings after giving reasonable opportunity to the applicant, he was reinstated in service and placed under suspension simultaneously w.e.f. 14.05.1988 and subsistence allowance, as admissible, was paid to him w.e.f. 14.05.1988. In further compliance of the directions of this Tribunal, in subsequent disciplinary proceedings, the applicant was provided photocopy of the educational certificate of 8th class, which was produced by him at the time of interview and on the basis of which he was selected as Vehicle Mechanic and on verification same was proved fake. The applicant was also provided with advertisement letter issued by the Employment Exchange, photocopy of 1st page of Service Book and other relevant documents. He was also given opportunity for cross examination of witnesses. The applicant replied the documents provided by the respondents and the disciplinary authority, after considering the finding recorded by the Inquiry officer and based on oral, documentary as well as circumstantial evidences, passed the penalty of 'dismissal from service' vide order dated 21.04.1994 with retrospective effect from

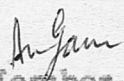
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14.5.1988, which however, has been revised by the Appellate Authority vide order dated 10.03.2004 (Annexure-15 of O.A) while deciding the appeal of the applicant dated 12.06.2002 .

18. In view of the observations made above, we find no illegality in the action taken by the respondents particularly in the circumstances when in compliance of the directions of the Tribunal dated 24.04.1992 in O.A No. 438/1989, the applicant was reinstated in service and after giving all due opportunity to him, Disciplinary Authority passed the order dated 21.04.1994 dismissing the applicant from service with retrospective effect from 14.05.1988, which however, has been revised by the Appellate Authority vide it's order dated 10.03.2004 dismissing the applicant from service 'with immediate effect'. The judgments relied upon by the learned counsel for the applicant are not applicable in the present case. Accordingly we find no good grounds for interference of this Tribunal and the O.A is dismissed having without merit.

19. Parties are directed to bear their own costs.


Member-A


Member-J

Anand/-